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AZ CORP COMMISSION
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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES

Chairman

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Commissioner

GARY PIERCE

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

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MAR 25 2010

ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 85701

IN THE MATTER OF THE FORMAL
COMPLAINT OF GARY R. BAHR AND
LARRY C. ROWLEY AGAINST TRICO
ELECTRIC COOPERATIVE, INC.

Docket No. E-01461A-10-0073

**MOTION TO DISMISS AND
ANSWER OF TRICO ELECTRIC
COOPERATIVE, INC.**

MOTION TO DISMISS

TRICO ELECTRIC COOPERATIVE, INC. ("Trico") moves that the Arizona Corporation Commission ("Commission") dismiss Complainants' formal Complaint ("Complaint") against Trico on the following grounds:

1. The Complaint makes no allegation that Trico has any legal obligation to Complainants with respect to Silver Star Road or Herman's Road as having an ownership interest in the Roads or other legal basis for such alleged obligations; and
2. The Complaint is based upon an alleged tort for which the Arizona courts rather than the Commission have jurisdiction. *Campbell v. Mountain States Tel. & Tel. Co.*, 120 Ariz. 426, 586 P.2d 987 (1978).

3. Accordingly, the Commission lacks subject matter jurisdiction.

ANSWER

Trico, for its answer to the formal Complaint of Gary R. Bahr and Larry C. Rowley, filed with the Arizona Corporation Commission (“Commission”) on or about February 26, 2010, and served by the Commission on Trico on March 5, 2010, pursuant to A.A.C. R14-3-106H, admits, denies and alleges as follows:

4. Trico denies each and every allegation of the Complaint insofar as it pertains to Trico.

5. Without limiting the answer to paragraph 1, Trico alleges as follows:

a. At the request of the then owners of the property now owned by Complainants on Silver Star Road (“Road”) in Pima County, Arizona, Trico installed underground electric facilities in the Road to serve such properties and others with electricity in November, 1985.

b. The Road is a dirt road commencing at Ajo Highway, Arizona Highway 86, extending north approximately 1.53 miles to its terminus and intersecting with Herman's Road; the Road is not maintained by Pima County; it is established as an Easement, 50 feet in width, for the purpose of ingress and egress and public utilities which was recorded in the Pima County Recorder's Office February 15, 1985 in Book 7472 of Dockets at pages 163-169.

c. Trico maintains a single phase 14.4 kV underground distribution line the full length of the Road predominantly along the eastern edge of the Road.

d. Trico properly established, or caused to be established, a trench for such line which was properly excavated and backfilled in accordance with Trico's Commission approved Rules, Regulations and Line Extension Policies and the National Electric Safety Code.

1 e. The Road is located in or near the floodplain and has numerous
2 washes that funnel into the Road from the floodplain; the Road is subject to numerous rains
3 and flooding.

4 f. Trico has properly maintained its facilities in the Road.

5 g. Trico's trench and other facilities have not caused the erosion or other
6 conditions alleged in the Complaint.


7 h. Trenches and other facilities of other utilities are located in the Road;
8 Trico has responded to telephone calls of exposed cable and upon its investigation none of
9 the cables were Trico's.

10 i. Insofar as Herman Road is concerned, all of Trico's facilities are
11 overhead and do not cause any damage to Complainants or others.

12 WHEREFORE, Trico requests that the Complaint be dismissed with prejudice and
13 that Complainants take nothing insofar as Trico is concerned.

14 Respectfully submitted this 25th day of March, 2010.

15 WATERFALL ECONOMIDIS CALDWELL
16 HANSHAW & VILLAMANA, P.C.

17 By 
18 Russell E. Jones
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22 Attorneys for Trico Electric Cooperative, Inc.

23 Original and 13 copies of the foregoing
24 filed this 25th day of March 2010, with:

25 Docket Control (filed with Tucson office)
26 Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

1 Copy mailed this 25th day of March,
2010, to:

2 Gary R. Bahr
3 Larry C. Rowley
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4 Tucson, AZ 85735

5 Lyn Farmer
Chief Administrative Law Judge
6 Hearing Division
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